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IN THE

SUPREME COURT OF THE UNITED STATES

JOHN GEDDES LAWRENCE and TYRON GARNER,
Petitioners,

versus

STATE OF TEXAS,
Respondent.

On Writ of Certiorari to the Court of Appeals of Texas
Fourteenth Division

BRIEF OF AMICUS CURIAE FIRST PRINCIPLES, INC. in support of the Respondent

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INTEREST OF THE AMICUS

This Brief is filed with consent pursuant to S. Ct. Rule 37 and Fed. R. App. P. 29(a). Amicus files this Brief in support of the Respondent, State of Texas, and urges the Court to uphold the decision of the lower court in *Lawrence v. Texas,* 41 S.W.3d 349 (Tex. App. 2001), which holds that the Texas Penal Code Ann. §§ 21.06 (Vernon 1994) did not offend the Texas state or federal constitutions. First Principles, Inc., is a public educational foundation organized and existing as a non-profit corporation under the laws of the Commonwealth of Kentucky. First Principles is concerned about educating, preserving and defending the history and foundations of American law and civil government, our first principles which are increasingly under attack in the courts and other public institutions. As Justice Oliver Wendell Holmes, Jr., said, "A page of history is worth a volume of logic." (See *New York Trust Co.* v. *Eisener*, 256 U.S. 345 (1921).) The suppression, rewriting, and even censorship of American history effects many legal and public issues, and in litigation, as in war, truth is ofen the first casualty.

STATEMENT OF LEAVE TO FILE BRIEF AMICUS CURIAE FIRST PRINCIPLES, INC. in support of the Respondent

The Respondent has confirmed consent to the filing of this brief amicus curiae.

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REASONS FOR AFFIRMING THE DECISION OF THE COURT OF APPEALS OF TEXAS BELOW

I. The Texas Sodomy Statute in Question Was Fashioned upon the ALI Model Penal Code.

The first sodomy law was enacted in Texas on February 1, 1860, using the common law definition of a crime against nature with a penalty of 5-15 years in prison. American Common Law was primarily based on Blackstone's Commentaries on the Laws of England 1765. In Volume IV, pp. 215-216, sodomy is described:

> The infamous crime against nature, committed either with man or with beast...the very mention of which is a disgrace to human nature. [Our English law] treats it, in its very indictments, as a crime not fit to be named. This the voice of nature and of reason, and the express law of God, determine to be capital...But now the general punishment of all felonies is the same, namely, by hanging.

Texas courts interpreted this definition to exclude oral sex,[1] and to include both homosexual and heterosexual deviate acts.[2] In 1943, the statute was amended to include fellatio as sodomy, passing unanimously in the House and Senate, 127-0 and 24-0. The law proscribed copulation with animals as well:

> Whoever has carnal copulation with a beast, or in an opening of the body, except sexual parts, with another human being for the purpose of having carnal copulation...shall be guilty of sodomy, and upon conviction thereof shall be deemed guilty of a felony, and

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[1] *Prindle* v. *State*, 21 S.W. 360 (Tex. 1893). "[However] vile and detestable the act proved may be, and is, it can constitute no offense, because not contemplated by the statute, and is not embraced in the crime of sodomy."

[2] *Lewis v. State*, 35 S.W. 372 (Tex. 1896). See also, *Adams* v. *State*, 86 S.W. 334 (Tex. 1905).

shall be confined in the penitentiary not less than two (2) nor more than fifteen (15) years.

Laws of Texas, 1943, at 194, chapter 111, enacted April 8, 1943.

In 1971, a Texas federal court rejected a married couple's request for injunction to prohibit enforcement of the sodomy law against married couples. The court noted that no married couples had ever been prosecuted under the law and future prosecution of them was unlikely. The court found sodomy to be a "heinous" crime laws against which the federal courts should respect.

Dawson v. Vance, 329 F. Supp. 1320 (D. Tex. 1971).

In 1973, Texas followed the lead of other states in enacting a comprehensive criminal code revision based on the American Law Institute's Model Penal Code. The Texas Law Review reported a grand jury's statement that: "The Penal Code of Texas, as it now exists...is a hodgepodge of inconsistencies, inequities, and penalties which have no basis in reason or common sense."[3]

Why would Texas consider the laws which had served its citizens for a century so inept? The revision committee reports,

> The State Bar committee was encouraged in its decision to revise the [Texas] penal code by three factors which indicate the timeliness of the project. First, the American Law Institute's Model Penal Code is available as a guide for the study; secondly, a great number of other states have recently taken action to bring their penal codes up to date, and finally our own state legislature has launched a general statutory revision program...the outstanding virtue of the Model Penal

[3] W. Page Keeton and William G. Reid. *Proposed Revision of the Texas Penal Code*, 45 TEXAS LAW REVIEW, 402 (1967).

> Code is that it offers a draft conceived and reviewed by experts...[4]

II. The American Law Institute's Model Penal Code (ALI) and Its Reliance Upon the Debunked and Discredited Kinsey Reports Is Central to an Under-standing and Proper Decision of This Case.

Basic to an understanding of the radical change which Petitioners seek to effect in a Texas sodomy statute is the fact that the elimination of sodomy statutes, accomplished in a majority of states and advocated herein by the Petitioners, represents an abandonment of the American common law and our unique system of Federalism based on an unreliable authority. On page 6 of their Petition for Writ of Certiorari, Petitioners state:

> The Homosexual Conduct Law was substituted [in 1974] for a facially nondiscriminatory law at a time when many States, prompted by changing views about the proper limits of government power that were reflected in the American Law Institute's Model Penal Code, were revising their criminal codes and completely abandoning offenses like fornication and sodomy. See Model Penal Code and Commentaries § § 213.2 cmt. 2, 213.6 note (1980). By 1986, 26 States had invalidated their sodomy laws. Bowers, 478 U.S. at 193-94.

This brief will demonstrate the ALI Model Penal Code (MPC) Reporters extensively used what is now known to be fraudulent and criminally-derived scientific authority. The ALI's MPC Draft recommended decriminalizing acts of sodomy based upon the unreliable Kinsey Reports. The ALI Reporters adopted "changing views" based on The Kinsey Reports with the "Kinsey Scale" of a fluctuating human sexuality. Long-settled American common penal laws like those proscribing "fornication and sodomy," meant

[4] Keeton and Reid, *supra.*, at 404.

to protect society's smallest building block, marriage, were, according to Chief ALI Reporter Herbert Weschler, "ineffective, inhumane and thoroughly unscientific," based on the truth now available through "objective scientific pursuit."[5]

Kentucky's experience is illustrative of the way other sodomy statutes have been improperly overturned, and bears strong resemblance to this case. When the Kentucky General Assembly was recognized as unlikely to repeal the sodomy statute, K.R.S. 510.100, in the foreseeable future, advocates of change undertook the defense of a criminal prosecution which had been brought under the sodomy statute in Fayette District Court. At trial, the advocates offered the testimony of six expert witnesses, including an anthropologist, a minister, a psychologist, a medical doctor, and a co-author of the Kinsey Reports, and filed briefs submitted by 26 amici curiae.

Commonwealth v. *Wasson*, Ky., 842 S. W. 2D 487, 489-90 at N. 1 (1992).

The prosecution, by contrast, "presented no witnesses," and offered "no scientific evidence or social science data." 842 S. W. 2d at 490.[6]

Not surprisingly, upon such a record, the trial court found the statute unconstitutional, and the Fayette Circuit Court affirmed that decision. 842 S.W. 2d at 488-489.

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[5] Weschler, H., *Challenge of a Model Penal Code*, 65 HARVARD LAW REVIEW, 1103 (1952).

[6] However, "Fayette District Judge Lewis Paisley refused to allow the county attorney to introduce any treatises on the subject of sodomy. A motion for separation of the defense witnesses was also denied." Moreover, "[Fayette Circuit] Judge Tackett expressed the opinion that the sexual acts performed by consenting adult homosexuals are necessary for them to enjoy a full and satisfying sexual life." *Wasson*, 842 S.W. 2d at 510 (Wintersheimer, J., dissenting).

The Kentucky Supreme Court then accepted the case upon a direct submission bypassing the Kentucky Court of Appeals. 842 S. W. 2d at 489. A sharply divided Kentucky supreme Court affirmed by a 4-3 vote and invalidated the state's sodomy statute, over two strong dissenting opinions. In its opinion, the majority noted that Kentucky thus joined "the moving stream" of "change," doing so "in deference to the position taken by the American Law Institute in the Model Penal Code." 842 S.W. 2d at 497-98. Thus the Wasson decision as in this case also relied upon the Kinsey Reports via testimony from its co-author, and upon the ALI Model Penal Code.

III. America's Law Order Changed From the Fixed Principles of the Declaration of Independence "Endowed by Their Creator" to Man-centered "Changing Views" Based on Evolving Law and Evolutionary "Science-based Legal Reform."

"A page of history is worth a volume of logic."

JUSTICE OLIVER WENDELL HOLMES, JR., *New York Trust Co.* v. *Eisener*, 256 U.S. 345, 349 (1921).

From the birth of our Republic, "One Nation Under God," American common law rested on the foundation of five centuries of English common law, particularly as set out in the Commentaries of Sir William Blackstone, whose legal foundation was declared to be:

> the Law of Nature and the Law of Revelation [upon which] depend all human laws; that is to say, no human laws should be suffered to contradict these.

William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND, Vol. 1, at 42 (1769).

Since 1793, the U.S. supreme Court has referred to Sir William Blackstone's Commentaries more than 272 times, in 200 years, for direction in the law. There were 57 such references between 1990 and 1996.

Following Blackstone, America's Declaration of Independence, the Charter of law, justice, and civil government, was thus based upon "the Laws of Nature and of Nature's God."[7] American Colonies and then State penal codes also adopted much of the English common law and prohibited "Offenses against Persons" and "Crimes against Morals." American Law was fixed on "truths" which are "self-evident" which guaranteed certain "unalienable Rights, ... Life, Liberty, and the Pursuit of Happiness" which are endowed from "their Creator."

These fixed principles from our founding Charter, upon which the U.S. Constitution is based, are capable of being understood by *We the People* with resort to original meaning—"the canon that a document is to be construed to accomplish the draftsmen's intention"—a process of legal interpretation that reaches back to English law of the thirteenth century.

Chief Justice John Marshall wrote that he could cite from the common law "the most complete evidence that the [drafters' original] intention is the most sacred rule of interpretation," which is self-evident truth. "The meaning attached by the writer to his words is the essence of communication." [Emphasis supplied.][8]

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[7] The Declaration of Independence is the first ordinance in the first volume of The Public Statutes at Large of the United States of America, printed in 1845 by the authority of the United States Congress. Stat. 1-3 (1845). See also, DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES, 69th Congress, 1st Session, House Document No. 398 (1927).

[8] Raoul Berger, *Jack Rakove's Rendition of Original Meaning*, 72 INDIANA LAW JOURNAL (1997). Online version at www.law.indiana.edu/ilj/v72/no3/berger.html

IV. Fixed American Penal Law Is Supplanted by "Science-based Law Reform."

[L]aw cases can turn almost entirely on an understanding of the underlying technical or scientific subject matter.[9]

In 1870, following the publication of Charles Darwin's *"The Origin of Species,"* Christopher Columbus Langdell of Harvard University and that institution's president, Charles William Elliott, led a movement to infuse Darwinian principles into law and education. Langdell and Elliott held that since mankind and nature are not creations of a "Supreme Being," but rather are continuously evolving, the law must do likewise.[10]

1890 distinguished Harvard Law graduate (1877) and Boston attorney Louis D. Brandeis, assisted in founding the Harvard Law Review and co-authored *The Right to Privacy*,[11] the most influential such article in American legal history. "Privacy," a highly controversial legal innovation described "a common-law right to be let alone that had not expressly been recognized by any English or American court,"[12] which innovation is implicit throughout the ALI's Model Penal Code in regard to "Sex Offenses." In the 1950s, David Allyn reports, the ALI "attempted to shape its Model Penal Code in accordance with Kinsey's scientific

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[9] Stephen Breyer, Associate Justice U.S. supreme Court, *The Interdependence of Science and Law*, SCIENCE MAGAZINE, 280; 537-538 (April 24, 1998).

[10] Herbert W. Titus, GOD, MAN AND LAWS: THE BIBLICAL PRINCIPLES, at 130 (1994).

[11] Samuel Warren and Louis Brandeis, *The Right to Privacy*, HARVARD LAW REVIEW (1890).

[12] Robert C. Berring, GREAT AMERICAN LAW REVIEWS, Edited with Commentary, p. 16 (1984); Morris L. Ernst and Alan U. Schwartz, PRIVACY, THE RIGHT TO BE LET ALONE, (1962).

discoveries – by privatizing most moral questions."[16] As Brandeis' 1890 Harvard Law Review began to simply "define anew" common law protections for the person and property, similarly Professor Weschler's 1952 Harvard Law Review reports on the ALI's attempt to merely "define and clarify" the common law principles that exist in our country."[17]

Louis B. Schwartz, ALI Reporter responsible for drafting the "Sex Offenses" section of the Model Penal Code; sought to distinguish between "private" and "public" sexual behavior. Though "slippery," he "felt that any behavior which might somehow be classified as private could be successfully deregulated." Schwartz summed up the ALI's "privacy" innovation in "Sex Offense" law by saying; "Contrary to existing law . . . any behavior participated in by small groups of consenting adults should be legal."[18]

Kinsey's omission of the negative social impact of sexual acts, while claiming grave social disorder due to traditional rules of monogamy and chastity, played a critical role in the mid-century privatization of morality. By 1996, Professor David Allyn of Princeton University explained in detail what escaped most judges and lawyers trained since 1960,

> Sexual Behavior in the Human Male undermined the assumptions of the dominant moral economy in two ways. First it drew a sharp opposition between science and sexual morality, between realism and idealism. Kinsey made it clearer that many American moral

[16] David Allyn, *Private Acts/Public Policy: Alfred C. Kinsey, the American Law Institute and the Privatization of American Sexual Morality*, JOURNAL OF AMERICAN STUDIES, AT 407 (1996).

[17] Robert Rothenberg, THE PLAIN-LANGUAGE LAW DICTIONARY, p. 19 (1981).

[18] David Allyn, *supra*, p. 424.

values were grounded in false assumptions about human behavior. Because American private behavior did not conform to public expectations, Kinsey suggested that such expectations were therefore unrealistic. Second, I would argue, Kinsey's text aided the privatization of morality in a more subtle manner by down-playing the problem of public sexual expression. The text gave the impression that sexual behavior only occurred in the private space of the home. Sexual Behavior in the Human Male was virtually silent when it came to questions of public sexuality; this silence served Kinsey's deregulatory ends ... This rhetorical opposition allowed the Supreme Court to produce two seemingly contradictory lines of argument in *Roth v. The United States* (1957) and *Griswold* v. *Connecticut* (1965). The first upheld the criminality of pornography while the second established the sexual rights of married couples. Both cases drew on the American Law Institute's model penal code's distinction between public and private sexual expression, which, in turn, drew on the work of Alfred Kinsey.[19]

In 1923, two generations after evolution took root in American law at Harvard, the American Law Institute, in 1923, began a study of the assumed "defects" in American criminal law. The ALI's Model Penal Code project, first advanced in 1931 by the Joint Committee on Improvement of Criminal Justice, composed of representatives of the American Bar Association, the American Law School Association, and the American Law Institute; see, ABA Rep. 25, 494, 513 (1931) was a private study without state or federal legislative authorization. The ALI Model Penal Code project received encouragement from President Franklin Delano Roosevelt and funding from the Rockefeller Foundation in 1950.[20]

[19] David Allyn, *supra*, p. 407.

[20] Letter of President Roosevelt included in *Report of the Advisory Committee on Criminal Justice to the Council of the American Law Institute* dated January 30, 1935, 373-375, American Law Institute Archives, Philadelphia.

Psychiatrist and ALI advisor Manfred Guttmacher explained the 25-year delay from 1923 in the criminal code revision:

> In 1950 the American Law Institute began the monumental task of writing a Model Penal Code. I am told that a quarter of a century earlier the Institute had approached the Rockefeller Foundation for the funds needed to carry out this project, but at that time, Dr. Alan Gregg, a man of great wisdom counseled the Foundation to wait, that the behavioral sciences were on the threshold of development to the point at which they could be of great assistance. Apparently, the Institute concluded that the time had arrived.

Manfred Guttmacher, M.D., THE ROLE OF PSYCHIATRY IN LAW, INTRODUCTION, pp. v, vi (1968).

By the 1970s the ALI's MPC was being widely referred to and taught from the Appendix in Criminal Law textbooks in law schools throughout America as having **"abolished common law crimes."**

> In 1962 the American Law Institute adopted the Model Penal Code, portions of which appear as an Appendix to this [criminal law text] Book...The Code has had a very significant impact. In recent years 36 states have enacted comprehensive new criminal codes, 5 others have completed work on but have not enacted new codes, and another 2 have revisions under way. These [state criminal] codes draw heavily upon the Model Penal Code, and most of them have followed its lead in abolishing common law crimes.[21]

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[21] Wayne R. Lafave, MODERN CRIMINAL LAW: CASES, COMMENTS AND QUESTIONS, at 46-47 (2nd Edition, 1988).

V. The ALI Model Penal Code Is an Unreliable Authority Upon Which to Decide This Case Because of the Code's Reliance Upon the Fraudulent and Criminally Derived Kinsey Reports.

The respected medical journal, *The Lancet,* reviewed Dr. Reisman's first book, *Kinsey, Sex and Fraud* (1990) recognizing:

> Dr. Judith A. Reisman and her colleagues demolish the foundations of the two reports...The important allegations from the scientific viewpoint are imperfections in the sample and unethical, possibly criminal, observations on children...The book goes beyond that, however, for Kinsey, *et. al,* questioned an unrepresentative proportion of prison inmates and sex offenders in a survey of "normal" sexual behaviour...Kinsey, an otherwise harmless student of the gall wasp, has left his former co-workers some explaining to do.[22]

Dr. Judith Reisman's research into the "scientific" basis for the ALI's MPC "Sex Offenses" section, and the Kinsey Reports, has dispositively revealed, from the Kinsey authors themselves, the data are fatally flawed.[23]

For 50 years the exalted validity of the Kinsey studies derived primarily from the large sample claimed, possibly 18,000 subjects; however, Kinsey "used only a quarter of the cases in his two reports, without notice."[24]

It will be shown there are many official published admissions and acknowledgments of zoologist Alfred Kinsey and his co-authors that their sex "science" is an unreliable

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[22] "Really Dr. Kinsey?," 337 THE LANCET 547 (March 2, 1991).

[23] J. A. Reisman, KINSEY: CRIMES AND CONSEQUENCES, (2000).

[24] J. A. Reisman, KINSEY: CRIMES AND CONSEQUENCES, 50-53, (2nd ed., 2000). See also Arno Karlen, SEXUALITY AND HOMOSEXUALITY, 456 (1971).

authority for any change in law or public policy. In fact, Kinsey's "methodology" for changing society's sexual life was modeled after gall wasp studies. Kinsey said "The techniques of this research [were] born out of the senior author's longtime experience with a problem in insect taxonomy. The transfer from insect [gall wasps] to human material is not illogical," and could be applied to any population (*Male* volume, p. 9). Co-author and former Kinsey Institute Director Paul Gebhard reported:

> In the early stages of the research, when much interviewing was being done at Indiana correctional institutions, Dr. Kinsey did not view the inmates as a discrete group that should be differentiated from people outside; instead, he looked upon the institutions as reservoirs of potential interviewees, literally captive subjects. This viewpoint resulted in there being no differentiation in our 1948 volume between persons with and without prison experience. . Kinsey never [kept] a record of refusal rates—the proportion of those who were asked for in interview but who refused.[25]

Kinsey Hagiographer Johnathan Gathorne-Hardy, revealed that Kinsey never hired a statistician. "Frank Edmondson, young astronomer" who had had "some rather superficial statistical training" was Kinsey's fake statistician. Clyde Martin "was no scholar" and had no such knowledge. Said Edmondson, Kinsey "wasn't a mathematician," in fact Kinsey "often got muddled between mean (average) and median," elementary statistical concepts.[26]

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[25] Gebhard, Gagnon, Pomeroy, and Christenson, SEX OFFENDERS, 31-33 (1965)(emphasis supplied).

[26] Johnathan Gathorne-Hardy, ALFRED C. KINSEY: SEX THE MEASURE OF ALL THINGS, p. 97, 98, 144 (1998).

Yet the Kinsey team regularly wrote and testified to the "normal" or "average" nature of their male sample. Within months after the Male Volume was published, Dr. Kinsey was invited to testify before a judicial committee of the California Legislature, regarding sex offense law. First, he claimed that his decade of research reflected "normal sexuality" to be found in the entire American male population; "[Our research] has the advantage of having a background of the picture typical in the population as a whole..."[27]

Paul Gebhard undertook to "clean up" the data after Kinsey's death and in 1979, when most state penal code revisions, including Texas', were concluding, revealed that of the 18,000 interviews, 5,300 White Males accounted for the research base in the Male Volume. Of that 5,300, 2,446 were designated as convicts, 1,003 homosexuals, 50 transvestite, 117 mentally ill, 342 "Other," 650 boys* (KKC, p. 99), yielding 4,628 n= Aberrant and 873 n="Normal."[28]

Dr. Alan Gregg, director of the Medical Science Division of the Rockefeller Foundation, funded Kinsey's research and Warren Weaver recorded Gregg's concerns regarding serious flaws in Kinsey's data on May 7, 1951:

> [T]here has never been, in this group, any trained mathematical statistician who comes within gunshot of having the competence, training, and experience which are required. In Dr. Kinsey's own listing of his staff (Progress Report, April 1, 1950) he says that Mr. Clyde E. Martin 'continues in charge of the statistical

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[27] Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature, 1949, p. 133. Recorded in the Assembly Journal, March 8, 1950.

[28] NIMH Grant The Kinsey Data; Marginal Tabulations, 1979, p. 3.-6 Gebhard and Johnson claim theirs is a 5,460 White Male Sample.

handling our data (sic).' His scientific stature has not as yet caused him even to be listed in American Men of Science, the latest edition of which contains about 50,000 names. Dr. Kinsey must approve highly of him, for in 1951, he raised his salary by 36 per cent. In his own diary record of a visit to Kinsey in July 1950, Dr. Gregg said, under the heading of personnel: 'Past and present needs remain unsatisfied in point of . . . statistics." This fault — this admittedly absolutely basic fault — existed in the project in 1942, it has existed ever since, there is no promise whatsoever that it will cease to exist — and we do nothing about it.[29]

Moreover, Kinsey failed to allow for "volunteer error." As Dr. Abraham Maslow has noted:

> [V]olunteers will always have a preponderance of [aggressive] high dominance people and therefore will show a falsely high percentage of non-virginity, masturbation, promiscuity, homosexuality, etc. in the population.[30]

Finally, zoologist Alfred C. Kinsey was not the conventional, middle-American family man, who was merely a "disinterested" academic Indiana University, and the mass media presented him to be. In 1997, Kinsey biographer James H. Jones, reveals,

> The man I came to know bore no resemblance to the canonical Kinsey. Anything but disinterested, he approached his work with missionary fervor...He wanted to undermine traditional morality, to soften the rules of restraint...Kinsey was a crypto-reformer who spent

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[29] Warren Weaver, Desk Diary, May 7, 1951, pp. 4-5, Rockefeller Archive Center.

[30] Abraham Maslow, *Test for Dominance-Feeling (Self-Esteem) in college Women*, THE JOURNAL OF SOCIAL PSYCHOLOGY 255, 270 (1940); Abraham Maslow, *Self-esteem, Dominance, Feeling and Sexuality in Women*, 16 THE JOURNAL OF SOCIAL PSYCHOLOGY 259, 294 (1942)

> his every waking hour attempting to change the sexual mores and sex offender laws of the United States...In Kinsey's case, the personal was always political.[24]

Later Jones commented on how Kinsey's own carefully manufactured persona hid his "missionary fervor...to undermine traditional morality" and his own sexual predilections which would have damaged his credibility and stopped his mission to change the sex offender laws of the United States:

> There is no way that the American public in the 1940s and the 1950s would have sanctioned any form of behavior that violated middle class morality on the part of the scientist who was telling the public that he was disinterested and giving them the simple truth....Any disclosure of any feature of this private life that violated middle class morality would have been catastrophic for his career....For Kinsey, life in the closet came complete with a wife, children, a public image... that again he preserved at all costs. Kinsey's reputation still in large measure rests upon an image of him that he cultivated during his lifetime...the official mystique.[25]

It was safer to reveal in 1997 that Kinsey was a sado-masochistic homosexual, than in 1950 before many sodomy laws changed via The Kinsey Reports and the ALI MPC. Sexual harassment was rampant in his team and his relationship with "statistician" Clyde Martin may explain why Kinsey allowed the Reports statistics to suffer:

> The power relationship between Kinsey and then unmarried Martin . . . was not exactly equal. Kinsey

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[24] James H. Jones. *"Dr. Yes,"* THE NEW YORKER, September 1, 1997, p. 100-101.

[25] James H. Jones, interview in Tim Tate, Secret Histories: Kinsey's Paedophiles. (Yorkshire Television (Channel 4), United Kingdom, aired August 10, 1998.

was older, well established professionally, and Martin's employer. Kinsey worked hard at seducing this insecure, anxious, and financially strapped young man.[31]

Finally Jones reports that, "Kinsey concentrated on negative eugenics, calling for a program of sterilization that was at once sweeping and terrifying. "The reduction of the birth rate of the lowest classes must depend upon the sterilization of perhaps a tenth of our population."[32]

While Gore Vidal pronounced Kinsey the "most famous man in the world for a decade" the Channel 4, British Yorkshire Television documentary, "Kinsey's Paedophiles," also confirmed Dr. Judith Reisman's findings including how Kinsey's team collaborated with active pedophiles and the resulting criminally derived pedophile "data," became "Table 34," on page 180 in *Sexual Behavior in the Human Male*. Kinsey-favoring biographer James Jones admitted in the British Yorkshire interview what was printed in Kinsey's own seminal research that children some as young as 2 months of age were used by "9" adult male subjects for Kinsey's human experiments:

> Kinsey relied upon [King, a pedophile] for the chapter on childhood sexuality in the male volume . . . Many of his victims were infants and Kinsey in that chapter himself gives pretty graphic descriptions of their response to what he calls sexual stimulation. If you read those words, what he's talking about is kids who are screaming. Kids who are protesting in every way they can the fact that their bodies or their persons are being violated.[33]

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[31] James H. Jones, ALFRED C. KINSEY: A PRIVATE/PUBLIC LIFE, p. 393.

[32] *Id.*, at 809, FN 78 (1997).

[33] "Secret Histories, *Kinsey Paedophiles*, *supra*. See also *Kinsey, infra*, at 161 (noting "violent convulsions, groaning, sobbing, violent cries, with an abundance of tears (especially among younger children.")).

In addition to King's data, until the Yorkshire investigators located the criminal trial records and news reports in Berlin, only a few in Kinsey's inner circle knew about the Kinsey Institute's long-standing collaboration with Dr. Fritz Von Balluseck, the Nazi pedophile, who contributed his child abuse data (from roughly 1936-1956) to Kinsey's research database.[34] A sampling of German newspaper accounts tell the story:

> The Nazis knew and gave him the opportunity to practice his abnormal tendencies in occupied Poland on Polish children, who had to choose between Balluseck and the gas ovens. After the war, the children were dead, but Balluseck lived.

[*National-Zeitung*, May 15, 1957].

> Balluseck . . . corresponded with the American Kinsey Institute for some time, and had also got books from them which dealt with child sexuality. [*Tagespiegel*, October 1, 1957].

> The connection with Kinsey, towards whom he'd showed off his crimes, had a disastrous effect on [von Balluseck]...[I]n his diaries he'd stuck in the letters from the sex researcher, Kinsey in which he'd been encouraged to continue his research . . . . He had also started relationships ... to expand his researches. One shivers to think of the lengths he went to. [*TSP*, May 17, 1957, emphasis added]

Kinsey recorded these horrific events in his *Male* volume cloaked in scientific respectability:

> Better data on preadolescent climax come from the histories of adult males who have had sexual contacts with younger boys and who, with their adult backgrounds, are able to recognize and interpret the boys'

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[34] J. A. REISMAN, *supra.*, pp. 165-170.

> experiences . . . 9 of our adult male subjects have observed such orgasm. . .we have secured information on 317 preadolescents who were either observed in self masturbation, or who were observed in contacts with other boys or other adults.[35]

VI. The Kinsey Reports' Junk Sex Science Is Authority for "Science-based" Legal Reform and the Primary Authority for Decriminalizing Sodomy Laws.

Kinsey's Sexual Behavior in the Human Male appeared in January, 1948 and Sexual Behavior in the Human Female followed in August, 1953 each with extraordinary media coverage. The American Law Institute adopted The Kinsey Reports' findings, which included the conclusion that 95% of "normal" American men, many veterans of "the greatest generation," would be classified as sex offenders under the common law code in 1948.[36] The American Law Institute concluded these state sodomy laws were unenforceable and should be modified to take into account man's sexual evolution. "Regarding homosexuality, [ALI Reporter] Schwartz cited the Kinsey Reports as evidence of the frequency of homosexual activity and the senselessness of trying to control it."[37] Indeed, upon the Kinsey "research" many state sodomy laws have been changed or overturned.[38]

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[35] Alfred C. Kinsey, Wardell Pomeroy, Clyde Martin, SEXUAL BEHAVIOR IN THE HUMAN MALE, p. 144 (1948).

[36] "This is one of the startling observations of the Kinsey group ... When a total clean-up of sex offenders is demanded, it is in effect a proposal to put 95% of the male population in jail." Deutsch, Sex Habits of American Men, p. 121.

[37] David Allyn, *supra*. 426 (1996).

[38] Richard Green, SEXUAL SCIENCE AND THE LAW, pp. 1, 5 (1992).

A. The Call for "Science-based" Legal Reform

A 1952 article in the Harvard Law Review by ALI's Chief Reporter Herbert Weschler advocated for revision of; "ineffective, inhumane and thoroughly unscientific" state criminal laws which, its author claimed, were not based on the truth which had now become available through "objective" scientific pursuit.[39] Attorney Morris Ernst, a few months after the appearance of the 1948 Kinsey Report, published one of five books which would be published advocating penal reform based on the "science" of the Kinsey Reports, stating:

> [V]irtually every page of the Kinsey Report touches on some section of the legal code . . . a reminder that the law, like our social pattern, falls lamentably short of being based on a knowledge of facts.[40]

Based upon Kinsey's biased and seriously flawed data, the "Sexual Offenses" Art. 207, of the Model Penal Code was constructed. ALI Reporter Morris Ploscowe parroted Kinsey's "scientific" findings:

> These pre-marital, extra-marital, homosexual and animal contacts, we are told, are eventually indulged in by 95 per cent of the population in violation of statutory prohibitions. If these conclusions are correct, then it is obvious that our sex crime legislation is completely out of touch with the realities of individual living and is just as inherently unenforceable as legislation which prohibits . . . an activity which responds to a wide human need.[41]

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[39] Weschler, H., *Challenge of a Model Penal Code*, 65 HARVARD LAW REVIEW 1103 (1952) .

[40] Morris Ernst and David Loth, AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT, n. 28, 132 (1948).

[41] Morris Ploscowe, *Sexual Patterns and the Law*, in Albert Deutsch, SEX HABITS OF AMERICAN MEN: A SYMPOSIUM ON THE KINSEY REPORT, 126 (1948).

In addition to this book by Albert Deutsch (Ed.), to which Ploscowe contributed, three of the four others calling for "science-based" law reform based on the new "science" of the Kinsey Reports, were collections of essays of luminaries in education, law, psychiatry, psychology, and medicine.[42]

B. Changing Standards Changes terms:

Section 207 of the ALI Model Penal Code, abandoned discrete common law terms in favor of new scientific terms: "Sexual Offenses," first appeared in 1955, Draft 4.

Section 207.5, titled "Sodomy and Related Offenses," proposed that consensual sodomy with an "actor" 10 years or older be classified a misdemeanor. Appendix A to section 207.5 is titled Frequency of Sexual Deviation, and consists of 21 quotations, 19 of which are taken from Kinsey's book, Sexual Behavior in the Human Male (1948). The ALI Model Penal Code Reporters quote Kinsey's findings that 72% of males experiment with mouth-genital contact, 40 to 50% of farm boys have animal contact, "37% of the total male population has at least some overt homosexual experience to the point of orgasm between adolescence and old age. This accounts for nearly 2 males out of every 5 that one may meet."[43]

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[42] Rene Guyon, THE ETHICS OF SEXUAL ACTS (1948); Morris Ernst, AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT, (1948); Donald Porter Geddes and Enid Curie, EDS., ABOUT THE KINSEY REPORT (1948); Jerome Himelhoch and Sylvia Fava, EDS., SEXUAL BEHAVIOR IN AMERICAN SOCIETY (1948).

[43] Model Penal Code, Draft 4, Section 207.5 (1955) *Sodomy and Related Offenses,* appendix A, pp. 281-282. Quoting from Kinsey's *Male* volume, pp. 371, 671, Figure 156 [page 625].

C. Kinsey's data "permeate all present thinking on this subject."[44]

Although the authors of the ALI MPC accepted Kinsey's conclusions at face value, Kinsey's data are more than fatally flawed, and are not even scientific as the sample was, according to Kinsey's coauthors, never representative of the American adult male population.

The ALI began a campaign to secure enactment of its provisions as state law beginning in Illinois which adopted the Code in 1961. Frank Horack, Jr., acting Dean of Indiana University, writing in support of the Kinsey Reports' impact on law, astutely predicted:

> The principal impact of the Kinsey Report will be at the level of the administration of the law. It will provide the statistical support which police officers, prosecutors, judges, probation officers and superintendents of penal institutions need for judging individual cases . . . Officials will read it. Defense counsel will cite it. Even when it is not offered into evidence, it will condition official action. Psychiatrists, psychologists, penologists, juvenile and probation officers all participate in modern penal procedures — they will use the data and their professional advice will be heeded by the judge. Here the Report will control many decisions and dictate the disposition and treatment of many offenders.[45]

Just as Professor Horack looked forward, Carol Cassell, when president of the American Association of Sex Educators, Counselors and Therapists (AASECT), looked back,

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[44] Report of the Illinois Commission on Sex Offenders, March 15, 1953, p. 9.

[45] Frank E. Horack, Jr. *Sex Offenses and Scientific Investigation*. 44 ILLINOIS LAW REVIEW, 156, 158 (1950) (emphasis supplied).

she confirmed The Kinsey Reports as the root of their professional authority and success in the group's monthly organ, Contemporary Sexuality,

> Look how we've used the Kinsey data. We've used it for everything from assessing the stability of marriage to raising children to trying to understand human growth and development — not just sexual but also psychological growth and changes over time.[46]

Concurrent with the publication of Indiana University's and the Kinsey Institute's *Male* and *Female* volumes, a number of states conducted 'fact-finding" commissions to study sex crime problems. Pomeroy states that Kinsey personally worked on "the revision of sex laws" with Illinois, New Jersey, New York, Delaware, Wyoming, and Oregon commissions.[47]

In December 1949, Kinsey testified for an entire day before the "California Subcommittee on Sex Crimes." Kinsey told the committee:

> For the last 11 years we have had a research project, as you know, underway at the university on human sexual behavior . . . we find that 95 percent of the [male] population has in actuality engaged in sexual activities, which are contrary to the law.[48]

In 1951, the Illinois legislature funded a commission to study the sex offender. Francis Allen chaired the committee that drafted the report submitted to the Illinois legislature. Under Section II, "Scientific Findings," Allen writes: "No specific reference to the Kinsey findings is made here since these permeate all present thinking on this subject." Allen also chaired the workgroup "Framework for Sex Offender Laws" to which Alfred C. Kinsey and Wardell Pomeroy served as consultants.[49]

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[46] Cassell, C., October 1991. *Contemporary Sexuality*, The American Association of Sex Educators, Counselors and Therapists (AASECT).

[47] Wardell Pomeroy, Dr. Kinsey and the Institute for Sex Research, 210-11 (1972).

[48] Preliminary Report of the Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process, California Assembly, March 8, 1950, reported in foreword, unnumbered.

A similar commission was conducted in New Jersey and the report was facilitated by Paul W. Tappan, who would be a Reporter for the ALI Committee which drafted the Model Penal Code. Section II of the New Jersey report is titled: "Sex Deviation: Its Extent and Treatment." It begins with quotations from Kinsey's Male volume. The New Jersey Commission expressed its gratitude to Dr. Kinsey and Morris Ploscowe for their "frequent and extended consultations." [50]

The New Jersey Commission's report stated:

> [T]here can be no real doubt that a very large number of the male population of New Jersey has engaged in practices coming within the enumerations of our present abnormal sex offender law, on the basis of which they might be committed to one of our state mental hospitals.[51]

The significant influence of the Kinsey Reports is also evident in the case at bar. The majority opinion in *Bowers* v. *Hardwick*, 478 U.S. 186 (1986) noted that prior to 1961, "all 50 states outlawed sodomy." 478 U.S. at 194. It added that the first state to decriminalize sodomy, Illinois, did so in that year when it "adopted the American Law Institute's Model Penal Code, which decriminalized adult, consensual, private, sexual conduct." *id.*, at 194, n. 7. The Texas Court of Appeals cited the unreliable Kinsey Reports for the proposition that only fifty percent of the population remains exclusively heterosexual. *Lawrence v. State*, 41 S.W.3d 349, 353 n. 6 (Tex. App. - Houston [14th Dist.]

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[49] Report of the Illinois Commission on Sex Offenders, March 15, 1953, at 9.

[50] Report and Recommendations of the Commission on the Habitual Sex Offender as Formulated by Paul W. Tappan, Technical Consultant, February 1, 1950 at 12.

[51] *Id.*, at 18.

2001). The instant Petitioners also cited The Kinsey Reports for this proposition. Brief of Petitioners at 12.

Louis B. Schwartz, author of the Sex Offense section of the Model Penal Code, reviewed Kinsey's Male Volume in the University of Pennsylvania Law Review in 1948. His article provided the new language that was used to normalize deviate sexual conduct for the American bench and bar. Schwartz wrote:

> To reveal that certain behavior patterns are widespread, that they are a product of environment, opportunity, age and other factors over which the individual has little control, that they are not objectively harmful except as a result of society's efforts at repression (Kinsey, pp. 385-86) to point out that similar behavior is encountered among other animals than man, to suggest that the law ought not to punish and that psychiatrists might better devote themselves to reassuring the sexual deviate rather than attention to "redirect behavior" (Kinsey p. 660) - all these add up to a denial that sexual "perversion" is an evil.[52]

Schwartz then pictures "the distant day when Americans cease to regard minority morals as a legitimate object of social coercion," and suggests a covert and undemocratic method for change in state criminal codes:

> Eventually, such distinctions ease themselves into the written law, especially if it can be done in the course of a general revision of the penal code. This avoids the appearance of outright repudiation of conservative moral standards, by presenting the changes in a context of merely technical improvements.[53]

Although a number of new studies have now appeared in an attempt to support Kinsey's discredited and debunked "junk science," the decriminalization of sodomy originated in a single source – Indiana University's Kinsey Reports.

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[52] Louis B. Schwartz, *Book Reviews: Sexual Behavior in the Human Male*, 96 University of Pennsylvania Law Review 917 (1948)

D. State Law Journals Advocate for Penal Reform using Kinsey as authority

The ALI penal reform campaign appealed to the bench and bar via states' Law Journals, citing the Kinsey Reports as the "scientific" authority to define normal and therefore non-criminal behavior. The North Carolina Law Review testifies to its readers:

> More than two decades have passed since the publication of Alfred Kinsey's study on human sexual behavior that made clear the wide disparity between conservative sexual behavior permitted by law and the liberal sexual practices that Kinsey found actually to occur in society. Dr. Kinsey stated that "[s]ex laws are so far at variance with general sex practices that they could not conceivably be rigorously enforced. (Citing to 23 New York University Law Quarterly Rev. 540, 541 (1948), quoting Kinsey's Male volume.) The North Carolina sodomy statute is an example of an antiquated law in need of reform.

Other states cite the Kinsey Report data to advocate prostitution (Maine, 1976); boy prostitutes (Duke University, 1960); lightening sex crime penalties (Ohio, 1959); legalizing homosexuality (South Dakota, 1968); "beneficent concern for pedophiles" (Georgia, 1969); general revision (Oklahoma, 1970); 95% of males are sex offenders (Oregon, 1972); young children are seducers (Missouri, 1973, Tennessee, 1965); bias against judges "severe condemnation of sex offenders" (Pennsylvania, 1952);[54] and finally, the Colorado Law Review ridicules American standards of virtue,

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[53] *Schwartz, supra.*

[54] Judy Potter, *Sex Offenses*. 28 Maine Law Review 78 (1976); Albert J. Reiss, *Sex Offenses: The marginal status of the adolescent*. 25 Law and Contemporary Problems 311-312 (1960); Phillip E. Stebbins, *Sexual Deviation and the Laws of Ohio* 20 Ohio State Law Journal 347 (1959); Ronald P. Johnsen, *Sodomy Statutes—A Need for Change*, South Dakota Law Review 395-396 (Spring, 1968); B. E. C., Jr. *Pedophilia, Exhibitionism, and Voy*

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honor and chastity by publishing "The Legal Enforcement of Morality" authored by none other than *Playboy's*, pornographer Hugh Hefner. Claiming to be Kinsey's "pamphleteer," Hefner writes to his legal audience,

> Kinsey reports that in some groups among lower social levels, it is virtually impossible to find a single male who has not had sexual intercourse by the time he reaches his mid-teens.[55]

Revision Commissions reported to state legislatures that the Model Penal Code was their blueprint for complete revision, generally occurring for the first time since statehood, across the nation.[56]

In the rush to "science-based legal reform," not all state commissions accepted the sweeping revisions as an assumed improvement in the "clarification of law." In 1970 the Michigan Journal of Law Reform published the report of

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eurism: Legal Problems in the Deviant Society 4 GEORGIA LAW REVIEW 152 (1969); Larry E. Joplin, *Criminal Law: An Examination of the Oklahoma Laws Concerning Sexual Behavior*, 23 OKLAHOMA LAW REVIEW 459 (1970); Edward N. Fadeley. *Sex Crime in the New Code*, 51 OREGON LAW REVIEW 517 (1972); Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 MISSOURI LAW REVIEW 383 (1973); Ralph Slovenko and Cyril Phillips, *Psychosexuality and the Criminal Law*, 15 VANDERBILT LAW REVIEW 809 (1962); Jerome Hall, *Science and Reform in Criminal Law*, 100 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 733 (1952).

[55] Hugh Hefner. *The Legal Enforcement of Morality*. 40 UNIVERSITY OF COLORADO LAW REVIEW 200 (1967).

[56] See for example, The New Jersey Penal Code, Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, at x; Morgan S. Bragg, *Victimless Sex Crimes: To the Devil, Not the Dungeon*, 25 UNIVERSITY OF FLORIDA LAW REVIEW 140 (1973); John S. Eldred, *Classification and Degrees of Offenses—An Approach to Modernity*, 57 KENTUCKY LAW JOURNAL, 81 (1968-69); John C. Danforth, *The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented*, 38 MISSOURI LAW REVIEW, 362 (1973); Paul E. Wilson, *New Bottles for Old Wine: Criminal Law Revision in Kansas*, 16 Kansas Law Review, 588 (1968).

the director of the Criminal Law Revision Commission in California describing the advisory board's reaction to its "revision":

> . . . its product at first inspection struck most of the members of the Board, unfamiliar with the Model Penal Code or another contemporary criminal law revision, as a strange and baffling departure from all of the familiar landmarks of conventional law. The style of the Model Penal Code, its rigorously logical order and its general abandonment of common law terminology does pose difficulties for anyone whose entire educational and professional experience has been circumscribed by the eighteenth century common law concepts still preserved in the criminal law of California. The staff, of course, was greatly influenced by the Model Penal Code."[57]

VII. CONCLUSION

> "Alfred Kinsey was a moral revolutionary in scientist's clothing. The science was bad, even bogus; the man himself may now be forgotten; but the revolution came to stay, with a vengeance. Kinsey's message—fornicate early, fornicate often, fornicate in every possible way—became the mantra of a sex-ridden age, our age, now desperate for a reformation of its own."[58]

The Kinsey Reports, well known to sexual and legal revolutionaries, are all but unknown to the current bench and bar. Kinsey's once taunt "official mystique" sags now with many troubling revelations, since 1997. However, Kinsey's reputation still must be maintained because his Reports are the foundation of evolutionary sexuality worldwide. Sexual anarchists everywhere need "Kinsey," so an

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[57] Sherry, Arthur H., *Criminal Law Revision in California*, 4 JOURNAL OF LAW REFORM 433 (1971).

[58] Joseph Epstein, COMMENTARY, January, 1998. At www.Britannica.com, downloaded March 31, 2001

image reconstruction effort is being mounted by Hollywood, Myriad Pictures and Coppola's American Zoetrope studios. Reinventing Kinsey as "sexual pioneer" may continue to cover up the ugly reality of the Indiana University zoologist, eugenicist, evolutionist, pedophile collaborator Kinsey and his assault on the Law's majesty, **and maybe not.**

The manufactured statistics of The Kinsey Reports transformed "normal" human sexuality into another image, which became indelible, when the American Law Institute put The Kinsey Reports junk science into 1955 Draft #4, "Sexual Offenses," Section 207, of the Model Penal Code and sent it to the bench and bar in every state where, based on the ALI MPC and the Kinsey Reports, their long-settled and fixed common law standard was abolished via misinformed legislation and judicial decisions.

Prior to 1950 American Law largely prohibited any sexual acts outside of marriage. Marriage was a public contract, both civil and religious. Society had an interest in the security and solvency of every marriage. Marriage was to provide for the progeny of the union, secure the orderly passage of property to the next generation and prevent any burden to the State wrought by divorce, promiscuity, perversion and "unnatural" acts.[59] Marriage served the "public interest," but the "experts" of the ALI MPC dismantled the institution, based on the Kinsey Reports, by recommending the legalization of fornication, cohabitation, adultery, sodomy, etc., all suddenly "private" behaviors between "consenting" individual(s). The new free-

[59] WEBSTER'S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828). "The act of uniting a man and woman for life ; wedlock ; the legal union of a man and woman for life. Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children."

dom, "Privacy," was to be left alone to pursue one's one sexual "tastes," according to Judge Learned Hand.[60]

The ALI created a "myth of moral equivalents" and equated degenerative acts with generative acts, as Science scaled the fixed and known walls of Law and Biology protecting the "marital act," to the unwalled world of "anything goes" "sexualities." The negative connotation to Sodomite was transformed to the scientific sounding "homosexual," and Sodomy, per os/per anum, was divided euphemistically "oral sex," (now not even considered "sex" by many) and "anal sex." Thanks to Kinsey's pedophile findings of erotic capacities for children from birth, child molestation has been softened to "intergenerational sex" or "adult/child sex," now rampant in Church and State.

The viability of the two standards can be measured. ALI's Schwartz declared of his MPC work; "We have tried to base the criminal law with regard to sex offenses on danger to society rather than moral indignation."[61] Since the legal and sexual revolution has the "danger to society" increased or decreased? The common law governed when divorce was difficult and less prevalent and rates of sexual disease and dysfunction much less. AIDS was nonexistent. The public health reality reported by the CDC is that only 4 percent of infected males were exposed to AIDS through heterosexual contact; while 56% report exposure from sex with men, 22% from drug use (elective acts), 8% from both, and 8 % not identified."[62] Thanks to the ALI, the Law now finds preying on children less offensive as the American

[60] David Allyn, *Supra.*, p. 426.

[61] David Allyn, *Supra*, p. 424.

[62] HIV/AIDS Surveillance Report, CDC, Table 5, AIDS cases by age group, exposure category, and sex, reported through December 1999, United States, Cumulative totals.

Bar Association reported in 1990 that 80% of child molesters serve no time in prison.[63]

It is "self-evident truth" that private acts have enormous economic and social public consequences. February 11, 2003, CIA Director George Tenet, in Congressional testimony, called the new venereal disease, AIDS, a national security threat which undermines economic growth, exacerbates social tensions, diminishes military preparedness, creates huge social welfare costs, and further weakens beleaguered states: The virus respects no border. If, as Justice Brandeis said, law points the way,[64] then the "public" and "privacy" interests are not served by the imposition of an evolutionary law order, polluted by fraudulent science, upon the nation.

Accordingly, Amicus respectfully request that, for the reasons above, the decision of the Texas Court of Appeals must be affirmed as follows:

1. However, the incomplete reasoning and any reliance upon the junk sex science used by the American Law Institute's Model Penal Code is entirely misplaced; or in the alternative
2. Certiorari was improvidently granted;
3. Petitioners are overreaching in their demand that *Bowers v. Hardwick* be overturned, which must be rejected;
4. Finally, this Honorable Court has a duty to recognize that any and all state sodomy statutes overturned based on the ALI Model Penal Code and the Kinsey Reports junk "science" should be overturned.

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[63] AMERICAN BAR ASSOCIATION. 1990. *The Probation Response to Child Sexual Abuse Offenders: How Is It Working?* Executive Summary. State Justice Institute, Grant, SJI-88-llJ-E-015.

[64] LEONARD BAKER, BRANDEIS AND FRANKFURTER: A DUAL BIOGRAPHY (1986) at 29: "...the conduct of life is to so large an extent determined by the existing legal institutions, that an understanding of the legal system must give you a clearer view of human affairs in their manifold relations, and must aid you in comprehending the conditions, and institutions by which you are surrounded."

Respectfully submitted,

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